

ESTTA Tracking number: **ESTTA554901**

Filing date: **08/19/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210863
Party	Defendant Thanco Products & Imports, Inc.
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Submission	Other Motions/Papers
Filer's Name	Naomi Jane Gray
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Signature	/Naomi Jane Gray/
Date	08/19/2013
Attachments	Thanco Response to Notice of Filing Out of Time and Gray Dec.FINAL.130819 (00024039).pdf(180438 bytes)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CHRIS ECONOMIDES III,
an individual,

Opposer,

v.

THANCO PRODUCTS & IMPORTS, INC.
a Texas corporation,

Applicant.

**APPLICANT'S RESPONSE TO
OPPOSER'S NOTICE OF FILING
OUT OF TIME**

Opposition No. 91210863

Opposer's Notice of Opposition should be dismissed as a nullity for failure to comply with the service requirement of the Trademark Rules of Practice. According to Trademark Rule 2.101(b), Opposer "must serve a copy of the opposition, including any exhibits, on the attorney of record for the applicant." 37 C.F.R. § 2.101(b) (emphasis added). Although Opposer has included a Certificate of Service with his deficient Notice of Opposition and other filings, certifying "that a copy of this paper has been served upon all parties, at their address record by First Class Mail,"¹ Opposer has **never**

¹ Applicant filed a Change of Correspondence Address on June 5, 2013, to reflect an additional attorney of record, but the address of record has not changed.

1 actually served Applicant with its Notice of Opposition or any other document -- not once.² See
2 Declaration of Naomi Jane Gray in Support of Applicant's Response to Opposer's Notice of Filing Out
3 of Time. Where, as in this case, an opposer files a Notice of Opposition on the last day of the
4 opposition period, checks the applicable box on ESTTA indicating that it has effected service on the
5 applicant, but does not, in fact, serve the applicant, the Board has determined that the Notice of
6 Opposition should never have received a filing date and has dismissed the opposition. See Springfield,
7 Inc. v. XD, 86 USPQ2d 1063 (TTAB 2008). Accordingly, Thanco respectfully requests that the Board
8 dismiss Opposer's Notice of Opposition as a nullity.

9 Even if the Board were to overlook these fatal flaws in Opposer's filings and its blatant
10 disregard for the rules, Applicant's filing of its Reply brief is still timely. Under 37 C.F.R. § 2.119(c),
11 where service is made by First Class Mail -- the method of service elected by Opposer but not actually
12 used by him -- five days shall be added to the prescribed period for any response. Therefore Applicant's
13 Reply filed on August 5th, five days after the period prescribed under TBMP 502.02, is timely.

14 Accordingly, Applicant requests that the Board dismiss the opposition as nullity or, in the
15 alternative, consider its Reply brief timely filed.

16 Dated: August 19, 2013

17 Respectfully submitted,
HARVEY SISKIND LLP

18 /Naomi Jane Gray/
19 By: Naomi Jane Gray

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23 Attorneys for Applicant,
24 Thanco Products & Imports, Inc.

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26 _____
27 ² Thanco has only learned of Opposer's filings through its diligent monitoring of the TTABVue
28 record, and often well after the filing date of Opposer's Notice of Opposition and other filings.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CHRIS ECONOMIDES III,
an individual,

Opposer,

v.

THANCO PRODUCTS & IMPORTS, INC.
a Texas corporation,

Applicant.

**DECLARATION OF NAOMI JANE
GRAY IN SUPPORT OF APPLICANT'S
RESPONSE TO OPPOSER'S NOTICE
OF FILING OUT OF TIME**

Opposition No. 91210863

I, Naomi Jane Gray, declare as follows:

1. I am a member of the law firm Harvey Siskind LLP, attorney of record for Applicant Thanco Products & Imports, Inc. I make this declaration on personal knowledge except where otherwise indicated. If called as a witness, I would and could testify competently to the matters set forth herein.
2. Neither I, nor any other person at Harvey Siskind LLP, have ever received a copy of Opposer's Notice of Opposition at the address of record.

1 3. Neither I, nor any other person at Harvey Siskind LLP, have ever received a copy of any
2 documents filed by Opposer in these proceedings at the address of record.

3 The undersigned being warned that willful false statements and the like are punishable by fine
4 or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like
5 may jeopardize the validity of the application or document or any registration resulting therefrom,
6 declares that all statements made of his/her own knowledge are true; and all statements made on
7 information and belief are believed to be true.

8
9 Dated: August 19, 2013

/Naomi Jane Gray/
Naomi Jane Gray

CERTIFICATE OF TRANSMISSION

I hereby certify that true and correct copies of the attached APPLICANT'S RESPONSE TO OPPOSER'S NOTICE OF FILING OUT OF TIME and DECLARATION OF NAOMI JANE GRAY IN SUPPORT OF APPLICANT'S RESPONSE TO OPPOSER'S NOTICE OF FILING OUT OF TIME (Opposition No. 91210863) are being electronically transmitted to the Trademark Trial and Appeal Board on August 19, 2013.

/Naomi Jane Gray/
Naomi Jane Gray

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